

June 2, 1970

# EXTENSIONS OF REMARKS

17993

The charges against the firm were brought March 13 by Kappa Beta Pi, the U-M legal sorority. A spokesman for the sorority said Thursday that "the law school's action in barring this firm will be most effective in helping women to achieve equal employment opportunities in the legal profession."

## THE RULE OF LAW—OR POLITICAL APOLOGY

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 2, 1970

Mr. RARICK. Mr. Speaker, in remarking that no responsible citizen disagrees with the fundamental principles of Brown against Topeka, the U.S. Attorney General has adopted the role of party apologist for the revolutionary doctrine which is the cause of the Nation's present crisis. In so doing, he has perpetuated and given personal credibility to de facto legality and blatant injustice.

No greater proof—evidence—of the tragic falsity of Brown and the Warren Court's nightmares can be found than the deterioration in education, society, and morals on our national scene today.

I say in reply to Attorney General Mitchell's rhetorical defense of Brown, agitation, riots, and violence, that no informed responsible citizen can agree with the fundamental principles of Brown. Time does not correct injustice nor tyranny. History but amplifies our mistakes.

Mr. Carleton Putnam, world renowned author, has dispatched a letter to Mr. Mitchell pointing out succinctly the flaws in Brown and the tragic consequences of misusing law as a political weapon.

One cannot place party politics over solutions. It but defeats the hope for peace through law today.

Those in responsible leadership positions seeking human solutions rather than compounding our problem must desist from defending taboos and myths. *Stell* against Savannah cries out for honesty and justice and the return to open discussions based on facts and truth.

Unless we who are legally trained refrain from perpetuating false doctrine and restore peace through law instead of absurd theories and bureaucratic rationalization the people will do it for us. And the people are not always wrong.

I include a letter to the Attorney General from Mr. Putnam and a news clipping, as follows:

McLEAN, VA.  
May 22, 1970.

HON. JOHN N. MITCHELL,  
Office of the Attorney General, Department  
of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: My attention has just been called to your recent Law Day speech in which you remark that no responsible citizen disagrees with the fundamental principles of *Brown*. Such a comment seems to me to pass the bounds of understanding.

There have been no decisions more fateful than those in the orbit of *Brown* with its basic assumptions and far-reaching consequences. One of these decisions (the refusal

to grant *certiorari* in *Stell vs Savannah*, 1964) serves to point up my incredulity. Let me quote the essential paragraphs from the opinion of the trial court in the latter case:

"5. The psychometric test results have conclusively demonstrated that the differences between white and negro students in learning capabilities and school performance vary in increasing degree from the pre-school period through the completion of high school. The differences between white and negro students were consistent on all types of tests and increased with chronological age at a predictable and constant rate. The negro overlap of the median white scores dropped from approximately 15% in the lowest grades to 1-2% in the highest and indicated that the negro group reached an educational plateau as much as four years before the white group. When a special control group was selected for identity of age and intelligence quotient in the lower grades, the negro students lagged by two to four years when the entire group reached the 12th grade.

"6. The tests covered general intelligence, reading and arithmetic achievement, and mental maturity. On the last, the white average was 22 points above the negro average. The achievement tests showed major ability pattern differences. On reading comprehension and arithmetic fundamentals there was virtually no overlap between the two groups. . . .

"8. All the evidence before the Court was to the effect that the differences in tests results between the white and negro students is attributable in large part to hereditary factors, predictably resulting from a difference in the races. The evidence establishes and the Court so finds that of the twenty-point difference in maturity test results between negro and white students in Savannah-Chatham County a negligible portion can be attributed to environmental factors. Furthermore no evidence whatsoever was offered to this Court to show that racial integration of the schools could reduce these differences. Substantially all the difference between these two groups of children is inherent in the individuals and must be dealt with by the defendants [the School Board] as an unchangeable factor in programming the schools for the best educational results.

"11. The congregation of two substantial and identifiable groups in a single classroom, under circumstances of distinct group identification and varying abilities would lead to conflict impairing the educational process. It is essential for an individual to identify himself with a reference group for healthy personality development. Physical and psychological differences are the common basis of group identification, indeed they compel such self-identification. To increase this divisive tendency, it has been established without contradiction, that selective association is a universal human trait; that physically observable racial differences form the basis for preferential association and that patterns of racial preference are formed and firmly established at a pre-school age.

"12. The effects of intergroup association are reasonably predictable on the basis of that branch of psychology known as social dynamics. In the case of two identifiable groups in the same classroom, intergroup tensions and conflicts result. These become substantial when the groups have a high identification index in a situation where the difference between them is as great as that existing between white and negro children in the Savannah-Chatham County schools."

You will remember what followed: The Fifth Circuit reversed the trial court on grounds apart from the evidence, stating "We reiterate that no inferior federal court may refrain from acting as required by

[Brown] even if such a court should conclude that the Supreme Court erred either as to its facts or as to the law." *Stell* was thereupon taken to the Supreme Court by petition for a writ of *certiorari*. The writ was denied.

In sum, the Supreme Court, having reached a decision in *Brown* upon a record from which all the essential evidence had been omitted, refused even to consider the record in *Stell* (a record later confirmed by the studies of Arthur Jensen and the investigations of Nobel Laureate Shockley into the academic suppression of research in racial matters) or to take any action to cure the fatal flaw in the *Brown* case. Yet here was the pivot upon which an entire era of national policy at home and abroad was turning.

I need not emphasize the relationship between *Brown* and the universal deterioration prevalent on the national scene today. The false notion implicit in *Brown* that social injustice rather than the innate variability of human capacity is the cause of all differences of status in our society is not only destroying our educational system, but feeding the revolt among the young, increasing crime, creating an illusion of guilt among our law-abiding White citizens, and permitting the appeasement of evil everywhere. To quote the phrase of a liberal columnist writing of the situation in the Washington schools "the stench of lunacy" pervades the atmosphere. In addition, by attempting to fight communism while embracing the most notorious dogma of the Marxist ideology, the Administration is dangerously weakening its leadership both as to the Vietnam war and against the overthrow of our own government.

One might suppose that men like yourself would do something to abate the general chaos instead of praising one of its chief sources. And I must say to you what I said to minority member Leonard Garment some months ago: If you majority members in the Administration keep on ignoring the roots of your problem and fail to get together with Garment's minority on a platform of realities instead of on the quicksands of fantasy, you will end with a situation in the United States that will make Vietnam look like child's play. It is not only the construction workers that are sick of fawning and apology in Washington. There is a rising tide of nausea throughout the country over the Uriah Heeps in places of authority.

Finally I would beg you to cease speaking of "principles" and "responsible" citizens as regards the Supreme Court. In the long and varied annals of Anglo-American jurisprudence there is no more cowardly and dishonest episode than the denial of *certiorari* in *Stell*.

Sincerely,

CARLETON PUTNAM.

[From the Washington (D.C.) Post, May 2, 1970]

MITCHELL CALLS FOR END OF ATTACKS ON COURT

(By John P. MacKenzie)

Attorney General John N. Mitchell, in a marked departure from past practice, called yesterday for "an end to irresponsible and malicious criticism" of the United States Supreme Court.

"Extremist critics of the court have vastly overreacted" to court decisions but "most of the basic principles enunciated by the court have proved to be the best course for the nation to follow," Mitchell said in a Law Day speech.

The speech before the District Bar Association was warmly applauded by 2,500 persons at the Sonesta Hotel. But several lawyers in the audience commented after-

ward on the contrast between yesterday's speech and the vigorous criticism of Supreme Court decisions by President Nixon in his 1968 campaign which was managed by Mitchell.

The attorney general listed controversial decisions of the Warren Court on school desegregation, school prayer, obscenity, reapportionment counsel for defendants and

confessions and said, "I do not believe that any lawyer here, or any responsible citizen in this country, does not agree with the fundamental principles" of these decisions.

He added:

"It seems to me that much of the popular dissatisfaction is ill-founded or maliciously motivated and that more people, especially

we who are lawyers, should point this out and come to the defense of the court."

Mitchell listed several things which he said "the Supreme Court did not say" despite popular misunderstanding of its pronouncements. "It did not say that private persons may not discriminate within the circle of their family, friends or social activities" or that juveniles may be subjected to pornographic material, he said.

## SENATE—Wednesday, June 3, 1970

The Senate met at 10 o'clock a.m. and was called to order by Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal God, who hast committed to us the swift and solemn trust of life, since we know not what a day may bring forth, but only that the hour for serving Thee is always present, make us ever responsive to the claims of Thy holy will.

Be with this Nation in these crucial days. May the right determine the use of our might. Make us strong and great in the fear of God, and in the love of righteousness; so that, being blessed of Thee, we may become a blessing to all nations, for Thine is the kingdom and the power and the glory forever. Amen.

### DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. RUSSELL).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, D.C., June 3, 1970.  
To the Senate:  
Being temporarily absent from the Senate, I appoint Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri, to perform the duties of the Chair during my absence.  
RICHARD B. RUSSELL,  
President pro tempore.

Mr. EAGLETON thereupon took the chair as Acting President pro tempore.

### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, June 2, 1970, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

### FEDERAL FARM CREDIT BOARD

The bill clerk proceeded to read the nominations in the Federal Farm Credit Board.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

### FEDERAL MARITIME COMMISSION

The bill clerk read the nomination of Helen D. Bentley, of Maryland, to be a Federal Maritime Commissioner for the term expiring June 30, 1975.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### U.S. COAST GUARD

The bill clerk read the nomination of Rear Adm. Thomas R. Sargent III, to be Assistant Commandant of the U.S. Coast Guard with the rank of vice admiral.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

### COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### POLICING OF BUILDINGS AND GROUNDS OF THE LIBRARY OF CONGRESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 899, H.R. 12619.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. H.R. 12619, to amend section 11 of an act approved August 4, 1950, entitled "An act relating to the policing of the buildings and grounds of the Library of Congress."

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which was ordered to a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 91-897), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

H.R. 12619 would extend the present authority of the Library of Congress for policing the Library of Congress buildings to embrace the rental space it utilizes at certain other locations in Washington, D.C. The Library's present authority, expressed in the act of August 4, 1950 (64 Stat. 412; 2 U.S.C. 167-167j), does not extend beyond the streets surrounding its permanent buildings located on Capitol Hill.

The General Services Administration was requested by the Library of Congress to supply guards for the buildings leased for Library purposes at Taylor Street NW, and 214 Massachusetts Avenue NE, locations, but was advised by GSA that it was administratively and physically unable to supply guards for the purpose. Consequently, the Library of Congress has had to recruit its own special policemen to protect the staff and contents of its leased buildings. H.R. 12619 would grant such special police the same authority exercised by the police guarding the permanent Library of Congress buildings. It also would provide for police jurisdiction in the proposed James Madison Memorial Building.

### CROWD CONTROL FOR A SMALL COMMUNITY

Mr. MANSFIELD. Mr. President, in the past several years, a great deal of attention has been given to the effect and control of large gatherings of people, whether it be for spectator sports, peaceful demonstrations, or riots. It has just come to my attention that one of the most effective programs of crowd control in small communities has been developed and put into operation in Bozeman, Mont.

The plan may not be suitable for our large metropolitan areas, but it is something that I think should be brought to the attention of the other areas of the Nation.